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**UNITED STATES DISTRICT COURT**  
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**SOUTHERN DISTRICT OF CALIFORNIA**  
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9 DAVID KATZ, pro se; and ELIZABETH  
10 KATZ, pro se,  
11

Plaintiffs,

12 vs.  
13 AURORA LOAN SERVICES, LLC;  
14 MICHAEL COLEMAN; TFLG A LAW  
15 CORPORATION; SEAN H. BEDROSIAN;  
ERIC FERNANDEZ; YVONNE J  
WHEELER; CAL WESTERN  
RECONVEYANCE CORPORATION; and  
DOES 1-10,

16 Defendants.  
17

CASE NO. 11-cv-1806 – IEG (POR)  
ORDER DENYING MOTION FOR  
SANCTIONS [Doc. No. 13].

18 Plaintiffs David and Elizabeth Katz bring this action, alleging that Defendants' foreclosure  
19 proceedings and unlawful detainer action violated various provisions of the Fair Debt Collection  
20 Practices Act ("FDCPA"). Currently before the Court is Defendants TFLG, Sean H. Bedrosian, and  
21 Eric Fernandez (collectively, "TFLG")'s motion for sanctions pursuant to Rule 11 of Federal Rules  
22 of Civil Procedure. For the reasons set forth below, the Court **DENIES** the motion.

23 **BACKGROUND**

24 Plaintiffs are the owners of real property located at 903 Northwood Drive, Chula Vista, CA  
25 91914 ("Property"). On August 22, 2006, they took out a loan in the amount of \$1,000,000.00  
26 with Summit Lending Solutions, Inc., secured by a promissory note and a deed of trust on the  
27 Property. (First Amended Complaint ("FAC"), Exs. A, B [Doc. No. 3-1].) The Deed of Trust  
28 listed Summit Lending Solutions, Inc. as the "lender" and Mortgage Electronic Registration

1 Systems, Inc. (“MERS”) as a “nominee for Lender” and the “beneficiary” under the Deed of Trust.  
 2 (*Id.*, Ex. B.) The Deed of Trust listed Fidelity National Title as the “trustee.” (*Id.*) On October  
 3 15, 2008, MERS executed a Substitution of Trustee, substituting Defendant Cal-Western  
 4 Reconveyance Corporation (“Cal Western”) as the trustee under the Deed of Trust. (*Id.*, Ex. D.)

5 On December 26, 2008, after Plaintiffs failed to make their payments on time, Cal Western  
 6 recorded a Notice of Default against the Property. (*Id.*, Ex. C.) On December 28, 2008, MERS  
 7 assigned all of the beneficial interest under the Deed of Trust to Aurora Loan Services, LLC  
 8 (“Aurora”). (*Id.*, Ex. I.) On July 27, 2009, Cal Western recorded a Notice of Trustee’s Sale  
 9 against the Property, setting the sale for August 13, 2009. (*Id.*, Ex. G.) The Property was sold to  
 10 Aurora at a trustee’s sale on August 13, 2010. (*Id.*, Ex. H.)

11 On August 18, 2010, Aurora retained TFLG to pursue its right to possess the Property.  
 12 (*See* Fernandez Decl. ¶¶ 2, 13 [Doc. No. 13-2].) Aurora’s title to the Property was perfected and a  
 13 Trustee’s Deed Upon Sale conveying title to Aurora was recorded on August 26, 2010. (*See id.* ¶  
 14 11; *see also id.* Ex. D.) On March 19, 2011, TFLG served Plaintiffs with a three-day Notice to  
 15 Vacate. (*Id.* ¶ 14; *see also id.*, Exs. E, F.) After Plaintiffs failed to vacate, Aurora commenced an  
 16 unlawful detainer action on March 25, 2011. (*Id.* ¶¶ 17-18.) On June 13, 2011, TFLG obtained a  
 17 default judgment against Elizabeth Katz. (*Id.* ¶ 22.) On October 25, 2011, after the case had been  
 18 continued several times, Aurora filed a Request for Dismissal. (*Id.* ¶¶ 23-27.)

19 Plaintiffs commenced this action on August 12, 2011. On October 3, 2011, Plaintiffs filed  
 20 their FAC, alleging six causes of action for violation of the FDCPA. On October 24, 2011,  
 21 attorney Noah M. Bean spoke with David Katz via telephone and informed him of TFLG’s intent  
 22 to serve Plaintiffs with a motion for sanctions. (Bean Decl. ¶ 2 [Doc. No. 13-6].) Bean indicated  
 23 that TFLG intended to file the motion for sanctions after the 21-day safe harbor period, unless the  
 24 issues discussed therein were not addressed. (*Id.*) Bean sent a follow-up email to David Katz on  
 25 October 25, 2011, regarding the telephone conversation of October 24, 2011. (*Id.* ¶ 3, Ex. A.) On  
 26 November 21, 2011, TFLG filed the present motion for sanctions. Plaintiffs have not filed an  
 27 opposition to TFLG’s motion. On December 30, 2011, TFLG filed a reply to the non-opposition.  
 28 The Court took this matter under submission pursuant to Civil Local Rule 7.1(d)(1).

## **LEGAL STANDARD**

2 Rule 11 sanctions are warranted when a party files a lawsuit or motion that is frivolous,  
3 legally unreasonable, without factual foundation, or is otherwise brought for an improper purpose.  
4 *Warren v.Guelker*, 29 F.3d 1386, 1388 (9th Cir.1994). Under the plain language of Rule 11, when  
5 one party seeks sanctions against another, the Court must first determine whether any provision of  
6 Rule 11(b) has been violated. *Id.* at 1389. If the Court determines that Rule 11(b) has been  
7 violated, the Court “may impose an appropriate sanction on any attorney, law firm, or party that  
8 violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1). “If warranted, the  
9 court may award to the prevailing party the reasonable expenses, including attorney’s fees,  
10 incurred for the motion.” Fed. R. Civ. P. 11(c)(2).

11        Although Rule 11 applies to *pro se* plaintiffs, the Court can properly consider a plaintiff's  
12 *pro se* status when it determines whether the conduct at issue was reasonable. *Warren*, 29 F.3d at  
13 1390. Although the Court will read *pro se* complaints liberally, "they still may be frivolous if filed  
14 in the face of previous dismissals involving the exact same parties under the same legal theories."  
15 *Id.* (quoting *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987)). The Court may not decline  
16 to impose any sanction if a violation has occurred solely because a plaintiff is proceeding *pro se*.  
17 *Simpson v. Lear Electronics Corp.*, 77 F.3d 1170, 1177 (9th Cir. 1995).

## DISCUSSION

19 In this case, TFLG seeks terminating and monetary sanctions against Plaintiffs. TFLG  
20 argues that sanctions are proper because Plaintiffs sued it for violations of the FDCPA, even  
21 though TFLG was not involved in the foreclosure proceedings, and because its involvement in the  
22 unlawful detainer action on behalf of Aurora is protected by California's litigation privilege.  
23 TFLG further alleges that it is "patently obvious that Plaintiffs named TFLG in the Complaint for  
24 the sole purpose of harassing, vexing and punishing TFLG" for its representation of Aurora in the  
25 unlawful detainer action. (Def. Motion for Sanctions, at 4 [Doc. No. 13-1].)

26 The Court declines to impose sanctions in this case. Although Rule 11 applies to *pro se*  
27 plaintiffs, the Court can properly consider a plaintiff's *pro se* status when it determines whether  
28 the conduct at issue was reasonable. *Warren*, 29 F.3d at 1390. In this case, TFLG does not

1 dispute that it sent communications to Plaintiffs regarding the Notice to Vacate and the unlawful  
 2 detainer action. (*See* Fernandez Decl. ¶¶ 14, 17-18; *see also id.*, Exs. E, F.) Moreover, TFLG  
 3 expressly does not challenge the merits of Plaintiffs' claims against other Defendants. (*See* Def.  
 4 Motion for Sanctions, at 4.) Accordingly, the Court may assume that Plaintiffs' claims against  
 5 other Defendants have some merit. On these facts, a *pro se* plaintiff could reasonably have  
 6 concluded that TFLG was somehow connected with the prior foreclosure proceedings, and  
 7 therefore similarly liable under the FDCPA. Moreover, although TFLG's conduct might be  
 8 protected under the California's litigation privilege, the Court cannot say it was not reasonable for  
 9 a *pro se* plaintiff to believe that TFLG could be liable for commencing an improper unlawful  
 10 detainer action. *See Bus. Guides, Inc. v. Chromatic Commc'nns Enters., Inc.*, 892 F.2d 802, 811 (9<sup>th</sup>  
 11 Cir. 1989) (although *pro se* litigants are held to an objective standard of reasonableness under Rule  
 12 11, what is objectively reasonable for a *pro se* litigant and for an attorney may not be the same).

13 Crucially, this is not a case where Plaintiffs have filed a complaint that they should have  
 14 known was frivolous "in the face of previous dismissals involving the exact same parties under the  
 15 same legal theories." *See Warren*, 29 F.3d at 1390 (quoting *Kurkowski*, 819 F.2d at 204). Nor is  
 16 there strong evidence that Plaintiffs' sole purpose in naming TFLG as a defendant was to harass,  
 17 vex, or punish TFLG for its commencement of the unlawful detainer action. Accordingly, the  
 18 Court does not believe that Rule 11 sanctions are proper in this case. *See Zhang v. Honeywell*  
 19 *Int'l, Inc.*, Nos. CV-06-1181-PHX-MHM, CV-07-1790-PHX-MHM, 2008 WL 2559403, at \*\*2-3  
 20 (D. Ariz. June 23, 2008) (considering plaintiff's *pro se* status in declining to impose sanctions on  
 21 three of the four grounds urged by defendant); *Green Tree Serv., LLC v. Shoemaker*, No. C05-  
 22 54104JB, 2005 WL 1667758, at \*4 (W.D. Wash. July 15, 2005) (considering defendant's *pro se*  
 23 status as one factor in declining to impose Rule 11 sanctions for improper removal).

24 **CONCLUSION**

25 For the foregoing reasons, TFLG's motion for sanctions is **DENIED**.

26 **IT IS SO ORDERED.**

27 **Date:** January 10, 2012



28 **IRMA E. GONZALEZ, Chief Judge**  
**United States District Court**